

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

JUL 19 2004

In re ENRON CORPORATION SECURITIES, }  
DERIVATIVE, and "ERISA" LITIGATION }  
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MDL- 1446

Michael N. Milby, Clerk of Court

MARK NEWBY, et al., Individually and On }  
Behalf of All Others Similarly Situated, }

Plaintiffs, }

VS. }

Civil Action No. H-01-3624  
(Consolidated)

ENRON CORP., et al., }

Defendants. }

ORDER ON MOTION TO COMPEL PRODUCTION OF SEC DEPOSITION TRANSCRIPTS

Outside Director Joe H. Foy, joined by Certain Officer Defendants and Lead Plaintiff moved to compel production of Securities and Exchange Commission (SEC) transcripts from Arthur Andersen, LLP, Debra A. Cash, the "Citigroup" Defendants, Stephen D. Goddard, Michael M. Lowther, Kristina Mordaunt, Richard R. Petersen, and Vinson & Elkins, LLP. (Instrument No. 2217)

Recognizing that the SEC has asserted that these transcripts are not public and are to be kept confidential,<sup>1</sup> Foy has now withdrawn his motion, but without prejudice to the continued maintenance of the motion by the Certain Officer Defendants and Lead Plaintiff. The motion should be denied for the reasons expressed by the SEC. Accordingly, it is hereby

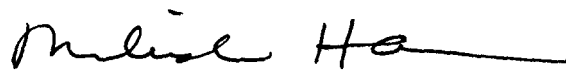
ORDERED that Joe H. Foy's Motion to Compel Production of SEC Deposition Transcripts is hereby DENIED.

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<sup>1</sup> On June 22, 2004, in a letter to counsel for Vinson & Elkins, and again on July 12, 2004, in a letter to counsel for Citigroup, the SEC asserted the confidentiality of the SEC transcripts and specifically objected to their being produced in this litigation.

2281

Signed at Houston, Texas this 19<sup>th</sup> day of July, 2004.

A handwritten signature in black ink, appearing to read "Melinda Harmon", written over a dashed horizontal line.

MELINDA HARMON  
UNITED STATES DISTRICT JUDGE

William Dodson and Kathleen Wetmore's motion to dismiss under Fed. R. Civ. P. 12(b)(6) (instrument #23); (3) Defendants Dodson and Wetmore's motion for stay until the Judicial panel issues a final order regarding transfer of this case to MDL 1446 (#34); and (4) Defendant Andrew Fastow's motion for stay during pendency of criminal proceedings (#46). Also pending is a letter dated July 13, 2004 from William Rucker, whose firm, Rucker & Middleton, L.L.P., is preparing to appear for Defendant Lawrence Lawyer, inquiring about the status of the temporary stay of deadlines for filing responses to Plaintiffs' pleadings, granted to Mr. Lawyer on January 21, 2004<sup>1</sup> (#22).

The Court first addresses Dodson and Wetmore's motion to stay because of the unusual procedural circumstances of this suit. Michael Kopper initially removed this action from the Los Angeles County Superior Court to the District Court in the Central

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<sup>1</sup> Defendant Michael Kopper had filed a motion to postpone all discovery and stay his obligation to file responsive pleadings during the pendency of his criminal proceedings (#18). Defendant Lawyer filed a notice of joinder (#14), stating that he has also entered a guilty plea, which instruments in the file (#16) reflect was pursuant to a Cooperation Agreement with the Enron Task Force, to one count of false tax returns involving his role in an Enron special purpose entity, RADR and waived his right to appeal. Because the charges against Lawyer are different from those against Kopper and require a different analysis, the Court construes his joinder as a separate motion for stay. Judge Terry Hatter of the United States District Court for the Central District of California, Western Division, granted a temporary stay (#22) of Kopper's and Lawyer's response date until the court ruled on the requests for stay until criminal sentencing, then extended that temporary stay in #38. Defendant Lawyer's criminal trial attorney's declaration states that Lawyer's sentencing has been reset to September 2004. Apparently neither Kopper's nor Lawyer's motions for stay until sentencing has been ruled upon by the transferor or transferee court.

District of California on diversity grounds and filed a "Notice of Potential Tag-Along" with the Judicial Panel for Multidistrict Litigation, requesting that the suit be transferred to Texas for coordination or consolidation with MDL 1446. That request is still pending before the Judicial Panel. Meanwhile one Defendant, Patty Melcher, filed a motion to dismiss for lack of personal jurisdiction and improper venue in California (#27) and a motion to transfer the suit to the United States District Court for the Southern District of Texas, pursuant to 28 U.S.C. § 1404(a). Pursuant to a stipulation of the parties, Judge Hatter then stayed the case pending the decision by the Judicial Panel for Multidistrict Litigation (#37, 38). Subsequently, the parties agreed that Melcher would withdraw her motion to dismiss and that her motion to transfer the case to this district would be granted (#40), but with the express reservation that "Plaintiffs are not consenting to a transfer of the Action to the multidistrict litigation ("MDL") before" the undersigned judge. Nevertheless, after the case was transferred to this district, pursuant to the December 12, 2001 order of coordination in *Newby* and because the Judicial Panel informed the Court it had the power to do so, since discovery in this suit clearly overlaps with that in *Newby* this Court ordered the suit be coordinated with MDL 1446 (#42, 45).

In essence, because this case is before this court based on a § 1404(a) transfer and not a transfer by the MDL Panel, whether or not the Judicial Panel grants a transfer does not

affect the immediate proceedings of this litigation. Therefore the Court denies Dodson and Wetmore's motion to stay.

After reviewing the charges against Defendants Lawyer and Kopper,<sup>2</sup> seeking postponement to protect their Fifth Amendment rights, the Court finds that the allegations to which they pled guilty are central to this civil litigation and that despite their cooperation with the government, a stay until sentencing is necessary. The clear overlap of issues in the criminal and civil cases make the potential for self-incrimination more likely.

Finally, Dodson and Wetmore move to dismiss the complaint for failure to plead fraud or mistake with sufficient particularity as required by Fed. R. of Civ. P. 9(b) and because Plaintiffs lack standing to recover for a derivative claim for injury to a partnership. The record reflects that pursuant to stipulations Plaintiffs were granted leave to file an amended complaint (#37), but that because of the stay pending a decision by the Judicial Panel, the Judge extended the time for them to do so for sixty days and then for the parties to meet to determine a schedule for filing it. Because this suit is now before the Court and because there is no reason why it cannot go forward against those parties not shielded by a stay until criminal sentencing, the Court concludes that Plaintiffs shall file their amended complaint within twenty days of receipt of this order. The Court

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<sup>2</sup> The Court has previously determined that Fastow is entitled to a stay. #1298 and 1353 in *Newby*, #570 in *Tittle*, H-01-3913. Moreover no opposition has been filed to his motion (#46) in this case.

further finds that Dodson and Wetmore's motion to dismiss is moot since it applies to the first complaint, about to be superseded, but grants leave to Defendants to reurge it in whole or in part or to modify it, if appropriate, after the filing the amended complaint. Regardless, responsive pleadings shall be filed timely.

Accordingly, in sum for the reasons indicated above, the Court

ORDERS that Dodson and Wetmore's motion to stay (#34) is DENIED. The Court further

ORDERS that Dodson and Wetmore's motion to dismiss (#23) is moot and that Plaintiffs shall file an amended complaint within twenty days of receipt of this order.

Finally the Court

ORDERS that Kopper's, Lawyer's and Fastow's motions for stay until their criminal sentences are imposed (#12, 14, 18, and 46) are GRANTED. Each of these Defendants shall file a responsive pleading to Plaintiffs' controlling complaint within twenty days after his sentencing.

**SIGNED** at Houston, Texas, this 19<sup>th</sup> day of July, 2004.

  
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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE